

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

MAYRA BARRAZA-ESPARZA,

Plaintiff,

v.

**REX ANTHONY THURMAN and
SMITHART TRUCKING, INC.**

Defendants.

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CIVIL ACTION NO. _____

JURY

DEFENDANTS REX ANTHONY THURMAN'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, Defendant, Rex Anthony Thurman ("Defendant"), hereby file this Notice of Removal in order to effectuate removal to this Court, the state court action described in Paragraph 1 below. Pursuant to 28 U.S.C. § 1446(a), Defendant sets forth the following "short and plain statement of the grounds for removal."

A. THE REMOVED CASE

1. The removed case is a civil action filed with the El Paso County District Clerk, on October 21, 2020, styled *Mayra Barraza-Esparza v. Rex Anthony Thurman and Smithart Trucking, Inc.*, Cause No. 2020DCV3414.

B. DOCUMENTS FROM THE REMOVED ACTION

2. Pursuant to Federal Rule of Civil Procedure 81 and 28 U.S.C. 1446(a), Defendant attaches a copy of all process, pleadings, and orders served upon Defendant, as required by 28 U.S.C. § 1446(a) as ***Exhibit "A"*** to this Notice of

Removal. Additionally, Defendant is simultaneously filing a separately signed Disclosure Statement that complies with Federal Rule of Civil Procedure 7.1.

C. REMOVAL IS TIMELY

3. Plaintiff, Mayra Barraza-Esparza ("Plaintiff"), filed the present civil suit against Defendant with the El Paso County District Clerk, who assigned the case to 168th Judicial District Court of El Paso County, Texas (the "state court") on October 21, 2020. Defendant was served with Plaintiff's Original Petition ("the Petition") on November 6, 2020. In the Petition, Plaintiff asserts a negligence-based cause of action and claims for personal injury damages against Defendants.

4. Defendant filed his original Notice of Removal within thirty days after receiving papers indicating that the present lawsuit was filed in the state court, and subsequently became removable to the United States District Court for the Western District of Texas. Defendant, therefore, contends that this removal was and is timely made.¹

D. VENUE IS PROPER

5. The United States District Court for the Western District of Texas, El Paso Division, is the proper venue for removal of the state court action pursuant to 28 U.S.C. § 1441(a) because the state court is located within the jurisdiction of the United States District Court for the Western District of Texas, El Paso Division.

E. DIVERSITY OF CITIZENSHIP EXISTS

6. This is a civil action that falls under this Court's original jurisdiction

¹ See, 28 U.S.C. § 1446(b)(3).

pursuant to 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

7. As admitted in the Petition, "Plaintiff is a resident of El Paso County, Texas."² Therefore, Defendant contends that Plaintiff is domiciled in, and is a citizen of, the State of Texas.

8. Defendant, Rex Anthony Thurman is a resident of and is domiciled in Sandoval County, New Mexico. Therefore, Defendant, Rex Anthony Thurman, is a citizen of the State of New Mexico.

9. Defendant Smithart Trucking is a foreign corporation formed under the laws of the State of New Mexico. Defendant's primary place of business is also in the State of New Mexico. Pursuant to 28 U.S.C. § 1332(c)(1), Defendant is not a citizen of the State of Texas. Rather, Defendant is a citizen of the State of New Mexico.

10. Because Plaintiff is a citizen of the State of Texas and Defendants are citizens of New Mexico, complete diversity of citizenship exists pursuant to 28 U.S.C. § 1332.

F. THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

11. In her Petition, Plaintiff states that she seeks "monetary relief of \$1,000,000 or less but more than \$250,000."³ As such, Plaintiff's Petition clearly establishes her intent to recover damages in excess of this Court's minimum jurisdictional limits of \$75,000, exclusive of interest and costs.

² See, Plaintiff's Petition at 1, a true and correct copy of which is attached hereto within ***Exhibit "A"*** and incorporated herein.

³ See, *id.* at 2.

12. Based on the aforementioned facts, the current state court action may be removed to the United States District Court for the Western District of Texas, El Paso Division, by Defendants in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this action is a civil action pending within the jurisdiction of the United States District Court for the Western District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy will exceed \$75,000, exclusive of interest and costs.

G. FILING OF REMOVAL PAPERS

13. Pursuant to 28 U.S.C. § 1446(d), Defendant provided written notice of the filing of its original Notice of Removal to all counsel of record, and Defendant filed a copy of the original notice of removal with the clerk of the state court where this action was originally commenced.

H. CONCLUSION

14. Defendant hereby removes the above-captioned action from the 168th Judicial District Court of El Paso County, Texas, and requests that further proceedings be conducted in the United States District Court for the Western District of Texas, El Paso Division, as provided by law.

Respectfully submitted,

MAYER LLP

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**ATTORNEY FOR DEFENDANT REX
ANTHONY THURMAN**

CERTIFICATE OF SERVICE

This is to certify that on the 7th day of December 2020, a true and correct copy of the foregoing has been forwarded to all counsel of record, as follows:

Via ECF
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/s/ Brian J. Fisher
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